

1 HONORABLE RICHARD A. JONES
2
3
4
5
6
7
8
9
10

11 UNITED STATES DISTRICT COURT
12 WESTERN DISTRICT OF WASHINGTON
13 AT SEATTLE

14 GOVERNMENT EMPLOYEES
15 INSURANCE COMPANY,

16 Plaintiff,

17 v.

18 JOSEPH RENIER ELENBAAS and
19 MELANIE W. ELENBAAS (marital
20 community) and KEITH L. COX (an
21 individual),

22 Defendants.

23 CASE NO. 2:23-cv-01786-RAJ
24 ORDER

25 I. INTRODUCTION

26 THIS MATTER comes before the Court on Plaintiff Government Employees
Insurance Company (“GEICO”)’s Motion for Summary Judgment. Dkt. # 16.
Defendants Joseph Renier Elenbaas and Melanie W. Elenbaas (collectively, “Defendants
Elenbaas”) did not file a Response to the Motion.

For the reasons set forth below, the Court **GRANTS** GEICO’s Motion for
Summary Judgment.

1

II. BACKGROUND

2

3 GEICO initially filed a declaratory judgment action in this Court pertaining to a
 4 motor vehicle accident between Defendants Elenbaas and Keith L. Cox (“Defendant
 5 Cox”). In June of 2021, GEICO and Defendants Elenbaas entered into a contract for
 6 motor vehicle insurance. Dkt. # 1 at ¶ 3.1. The policy spanned from June 18, 2021,
 7 through January 18, 2022, and covered two vehicles: (1) a 1995 Ford Explorer and (2) a
 8 2005 Ford Focus ZX5. *Id.* at ¶¶ 3.2, 3.4.

9 On January 6, 2022, Defendants Elenbaas’ 1990 Ford F150 (the “Ford F150”),
 10 which was *not* listed on the policy, was involved in a motor vehicle accident with
 11 Defendant Cox. *Id.* at ¶¶ 3.7 – 3.8 (emphasis added). Defendants Elenbaas and
 12 Defendant Cox are presently litigating this incident in Whatcom County. *Id.* at ¶ 3.9.
 13 GEICO filed the instant lawsuit requesting that it is entitled to a declaration that the
 14 insurance policy with Defendants Elenbaas explicitly precludes coverage for the Ford
 15 F150. *Id.* at ¶ 5.2. Additionally, GEICO seeks a declaration that it has no duty to defend
 16 or indemnify Defendants Elenbaas for the motor vehicle accident under the insurance
 17 policy at issue. *Id.* at ¶ 5.3.

18 While the affidavits and declarations provided by counsel for GEICO gave the
 19 Court sufficient information to rule on the Motion, the procedural missteps GEICO had
 20 committed throughout this litigation were confounding. Most pertinent among GEICO’s
 21 errors was its failure to clarify against whom it was moving for summary judgment, as
 22 the Motion mentioned Defendants Elenbaas, but the Reply made several allusions to
 23 Defendant Cox. On October 10, 2024, the Court Ordered GEICO to (1) show cause as
 24 to why Defendant Cox was a named party and (2) clarify the Defendants against whom
 25 GEICO was moving for summary judgment. Dkt. # 19. Subsequently, GEICO
 26 apologized to the Court for the confusion it caused, indicated that it was moving for

1 summary judgment against Defendants Elenbaas only, and stated that Defendant Cox
 2 was a named party out an abundance of caution. Dkt. # 20. The Court is satisfied with
 3 GEICO's response and can now rule on its Motion.

4 III. LEGAL STANDARD

5 Summary judgment is appropriate if there is no genuine dispute as to any material
 6 fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).
 7 The moving party bears the initial burden of demonstrating the absence of a genuine issue
 8 of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Where the moving
 9 party will have the burden of proof at trial, it must affirmatively demonstrate that no
 10 reasonable trier of fact could find other than for the moving party. *Soremekun v. Thrifty*
 11 *Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). On an issue where the nonmoving party
 12 will bear the burden of proof at trial, the moving party can prevail merely by pointing out
 13 to the district court that there is an absence of evidence to support the non-moving party's
 14 case. *Celotex Corp.*, 477 U.S. at 325. If the moving party meets the initial burden, the
 15 opposing party must set forth specific facts showing that there is a genuine issue of fact
 16 for trial in order to defeat the motion. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
 17 250 (1986). The court must view the evidence in the light most favorable to the
 18 nonmoving party and draw all reasonable inferences in that party's favor. *Reeves v.*
 19 *Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150-51 (2000).

20 However, the court need not, and will not, "scour the record in search of a genuine
 21 issue of triable fact." *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996); *see White v.*
 22 *McDonnell Douglas Corp.*, 904 F.2d 456, 458 (8th Cir. 1990) (the court need not
 23 "speculate on which portion of the record the nonmoving party relies, nor is it obliged to
 24 wade through and search the entire record for some specific facts that might support the
 25 nonmoving party's claim."). The opposing party must present significant and probative

1 evidence to support its claim or defense. *Intel Corp. v. Hartford Accident & Indem. Co.*,
 2 952 F.2d 1551, 1558 (9th Cir. 1991). Uncorroborated allegations and “self-serving
 3 testimony” will not create a genuine issue of material fact. *Villiarimo v. Aloha Island
 4 Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002).

5 IV. DISCUSSION

6 Although GEICO incorrectly cites to the Local Rules in arguing that Defendants
 7 Elenbaas’ failure to respond constitutes an admission, the facts are clear that GEICO does
 8 not owe Defendants Elenbaas a duty to defend or indemnify, as the Ford F150 was not
 9 covered under the insurance policy.¹ In Washington, a duty to defend or indemnify
 10 “arises when a complaint against the insured, construed liberally, alleges facts which
 11 could, if proven, impose liability upon the insured within the policy’s coverage.”
 12 *Unigard Ins. Co. v. Leven*, 97 Wn. App. 417, 425 (1999). “In construing the language of
 13 an insurance policy, a court must examine the contract as a whole.” *Federated Am. Ins.
 14 Co. v. Erickson*, 67 Wn. App. 670, 673 (1992) (internal citation omitted). “Terms in an
 15 insurance policy are given their common and ordinary meaning as understood by an
 16 average purchaser of insurance.” *Id.* (internal citation omitted).

17 Here, there is no question that the Ford F150 was not covered under the policy.
 18 The policy provides coverage for “owned” and “non-owned” automobiles. Dkt. # 17-1
 19 at 9. The Ford F150 is not a “non-owned” automobile as defined by the policy, as Mr.
 20 Elenbaas has owned the vehicle for at least ten years. *Id.* at 34. Moreover, the policy
 21 defines an “owned” automobile as “a vehicle *described in this policy* for which a

22
 23
 24 ¹ GEICO misinterprets Local Rule 7(b)(2), which provides that “[e]xcept for motions for
 25 summary judgment, if a party fails to file papers in opposition to a motion, such failure
 26 may be considered by the court as an admission that the motion has merit.” LCR 7(b)(2)
 (emphasis added). GEICO quotes the entire rule and omits the italicized portion, which
 raises concerns of bad faith.

premium charge is shown for these coverages.” *Id.* at 9 (emphasis added). The policy lists two covered vehicles: (1) a 1995 Ford Explorer and (2) a 2005 Ford Focus ZX5. *Id.* at 2. There is no mention of the Ford F150. Finally, Mr. Elenbaas himself wrote in a letter to GEICO that “the farm vehicle I was driving was not covered by our policy with you . . .” *Id.* at 34.²

These facts clearly demonstrate that the Ford 150 was not covered under the policy and GEICO had no duty to defend or indemnify Defendants Elenbaas. Accordingly, the Court grants GEICO's Motion.

V. CONCLUSION

Based on the foregoing reasons, the Court **GRANTS** Plaintiff GEICO's Motion for Summary Judgment. Dkt. # 16 The Clerk is instructed to enter judgment against Defendants Joseph Renier Elenbaas and Melanie W. Elenbaas only. The Clerk shall not close the case until further order of the Court, as Defendant Keith L. Cox is still a party to this action.

Dated this 23rd day of October, 2024.

Richard D. Jones

The Honorable Richard A. Jones
United States District Judge

² The “farm vehicle” is the subject Ford F150.